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8 UNITED STATES DISTRICT COURT
9 DISTRICT OF NEVADA
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11 THOMAS W. MCNAMARA, as the Court-
12 Appointed Monitor for AMG Capital
13 Management, LLC; BA Services LLC; Black
14 Creek Capital Corporation; Broadmoor Capital
15 Partners, LLC; Park 269, LLC; C5 Capital
16 LLC; DF Services Corp.; DFTW Consolidated
17 [UC] LLC; Impact BP LLC; Level 5 Apparel
18 LLC; Level 5 Capital Partners LLC; Level 5
19 Eyewear LLC; Level 5 Motorsports, LLC;
20 Level 5 Scientific LLC; NM Service Corp.
(f/k/a/ National Money Service); PSB Services
LLC; Real Estate Capital LLC (f/k/a/ Rehab
Capital I, LLC); Sentient Technologies; ST
Capital LLC; Westfund LLC; Eclipse
Renewables Holdings LLC; Scott Tucker
Declaration of Trust, dated February 20, 2015;
West Race Cars, LLC; and Level 5
Management LLC; and their successors,
assigns, affiliates, and subsidiaries,

21 Plaintiff,

22 v.

23 CHARLES M. HALLINAN, an individual;
24 HALLINAN CAPITAL CORP., a Delaware
corporation; DOES I-X; and ROE
CORPORATIONS I-X,

25 Defendants.
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Case No. 2:17-cv-02966-KJD-NJK

~~PROPOSED~~ PROTECTIVE ORDER

AS AMENDED

1 Upon consideration of the Monitor’s motion for a protective and confidentiality order, the
2 Court having found that the discovery of information that implicates third-party confidentiality
3 rights and/or that is confidential or proprietary has been requested in this action, and that the
4 disclosure and distribution of such information should be reasonably restricted, the Court finds
5 that good cause exists for the entry of this Order, and it is hereby ORDERED as follows:

6 **I. DEFINITIONS**

- 7 A. “Party” means any of the parties to this action, including the Monitor, and any of
8 their officers, directors, partners, members, principals or affiliates.
- 9 B. “Counsel” means counsel of record in this action for any of the parties to this
10 action and those attorneys’ stenographic, clerical, and paralegal employees, or
11 outside support personnel and services whose duties and responsibilities in the
12 conduct of this action require access to Confidential Material.
- 13 C. “Discovery Material” means:
- 14 (1) any information, document, tangible thing, or response to discovery
15 requests pursuant to Fed. R. Civ. P. 33, 34, or 36;
- 16 (2) any deposition testimony or transcript revealed during depositions upon
17 oral or written examination pursuant to Fed. R. Civ. P. 30, or 31;
- 18 (3) any document, thing, or premises made available for inspection or
19 produced to the Receiving Party pursuant to Fed. R. Civ. P. 26, 33, or 34;
- 20 (4) any document, thing, or premises made available for inspection or
21 produced to the Receiving Party in response to a subpoena pursuant to
22 Fed. R. Civ. P. 45; and
- 23 (5) any other similar materials, or portions thereof.
- 24 D. “Producing Party” means any party or non-party who produces Discovery
25 Material, including its directors, employees, and agents.
- 26 E. “Receiving Party” means a party (including the Monitor) to this action, including
27 all employees, agents, and directors (other than Counsel) of the Party, who
28 receives Discovery Material from a Producing Party.

1 F. "CONFIDENTIAL" means any document, discovery response, testimony, or
2 information that the Producing Party reasonably believes embodies: (i) trade
3 secrets, proprietary, or other confidential business information; (ii) private
4 personal or personnel information; (iii) information received in confidence from
5 third parties; or (iv) information invasive of an individual's legitimate privacy
6 interests.

7 G. "Confidential Material" means any Discovery Material, and any copies, abstracts,
8 summaries, or information derived from such Discovery Material, and any notes
9 or other records embodying or disclosing the contents of such Discovery Material,
10 that is designated as CONFIDENTIAL in accordance with section II below.

11 **II. DESIGNATION OF CONFIDENTIAL MATERIAL**

12 Any document, any information produced on magnetic disk or other computer-related
13 media, and any portion of oral testimony produced or given in this action that is asserted by
14 Producing Party to contain or constitute CONFIDENTIAL information shall be so designated by
15 Producing Party. The first page of each document or the front of each disk that contains
16 CONFIDENTIAL information shall be marked on its face with the following legend:

17 "CONFIDENTIAL"

18 Transcript pages containing or constituting CONFIDENTIAL information shall be marked
19 CONFIDENTIAL on each such page, and the transcript shall be marked confidential on its cover
20 page.

21 **III. ACCESS TO CONFIDENTIAL MATERIAL**

22 A. Subject to section III(B) and III(C), in the absence of an order of the Court, any
23 CONFIDENTIAL information produced in accordance with the provisions of
24 section II above shall be used solely for purposes of the prosecution and defense
25 of this action, shall not be used by the receiving party for any business,
26 commercial, competitive, personal, public or other purpose, and shall not be
27 disclosed to or discussed with any person other than: (i) Counsel for the
28 Receiving Party; (ii) persons employed by, or who are independent contractors of,

1 the Receiving Party who are participating in the management of the litigation and
2 the preparation of this case for trial; (iii) outside experts or consultants who are
3 engaged for the purpose of this action by the Receiving Party and such experts' or
4 consultants' support personnel; (iv) a deponent, who may be shown or examined
5 on any information, document or thing designated CONFIDENTIAL if it appears
6 that the deponent authored, prepared, or received it; (v) certified court reporters
7 taking testimony involving such CONFIDENTIAL information and their support
8 personnel; and (vi) the Court (including any trier of fact) in connection with the
9 proceedings in this action.

10 B. Outside Experts and Consultants. Subject to the provisions of this Protective
11 Order, all Confidential Material may be disclosed to any outside expert or
12 consultant engaged by a Party for the purpose of this action who has agreed to be
13 bound by the terms of this Protective Order by signing an Acknowledgement form
14 attached as Exhibit A. Executed copies of the Acknowledgment form shall be
15 exchanged between counsel promptly upon request, and the absence of a signed
16 Acknowledgment justifies the Producing Party's refusal to provide documents
17 until a signed Acknowledgment is provided by the Receiving Party.

18 C. Acknowledgment of Protective Order. Before obtaining access to any
19 Confidential Material covered by this Protective Order, any person who is
20 authorized to have access to Confidential Material pursuant to this Protective
21 Order must have agreed in writing to be bound by the terms of this Protective
22 Order by signing an Acknowledgement form attached as Exhibit A, an executed
23 copy of which shall be provided to the opposing party. This provision does not
24 apply to Parties, employees of a Party, or Counsel for a Party (including all
25 employees, support staff, or those of Counsel's law firm or agency), all of whom
26 may access Confidential Information without separately signing Exhibit A.

27 D. Disclosure Pursuant to Consent. Confidential Material may be disclosed to
28 anyone so authorized by prior written consent of the Producing Party, and no

1 Party is restricted in any way by this Protective Order in disclosing its own
2 Confidential Material.

3 The limitations on disclosure contained in this Protective Order shall apply to documents
4 or information that were in the possession of the Receiving Party before commencement of the
5 action entitled, *Federal Trade Commission v. AMG Services, Inc. et al.*, District of Nevada, Case
6 No. 2:12-cv-00536-GMN-VCF. However, the limitations on disclosure contained in this
7 Protective Order shall not apply to documents or information that are or become published or
8 available in a manner not in violation of this Protective Order.

9 **IV. COURT PROCEDURES**

10 ~~If a document containing CONFIDENTIAL information is filed with the Court, it shall be~~
11 ~~filed with one of the following notations:~~

See order issued
concurrently herewith

~~Filed Under Seal - Contains CONFIDENTIAL Information~~

~~Subject to Protective Order~~

14 ~~Any papers containing Confidential Material shall indicate clearly what portions are~~
15 ~~designated as CONFIDENTIAL.~~

16 **V. HANDLING OF CONFIDENTIAL MATERIAL**

17 A. Nothing herein shall restrict a person authorized to have access pursuant to
18 paragraph III(A) from making working copies, abstracts, digests, and/or analyses
19 of Confidential Material for use in connection with this action. Such working
20 copies, abstracts, digests, and analyses shall be deemed to have the same level of
21 protection as the original Confidential Material under the terms of this Protective
22 Order. Further, nothing herein shall restrict an authorized recipient from
23 converting or translating such information into machine-readable form for
24 incorporation in a data retrieval system used in connection with this action,
25 provided that access to such information, in whatever form stored or reproduced,
26 shall be limited to authorized recipients.

27 B. If the Producing Party through inadvertence produces any CONFIDENTIAL
28 document or thing without labeling, marking, or otherwise designating it as such

1 in accordance with the provisions of this Protective Order, the Producing Party
2 may give written notice to the Receiving Party that the document or thing
3 produced is deemed CONFIDENTIAL and should be treated as such in
4 accordance with the provisions of this Protective Order. The Receiving Party
5 must treat such document or thing with the noticed level of protection from the
6 date such notice is received. Promptly upon providing such notice to the
7 Receiving Party, the Producing Party shall provide the Receiving Party with
8 another copy of the document or thing that bears the new confidentiality
9 designation under this Protective Order.

10 C. Non-parties may be examined and may testify concerning any document
11 containing CONFIDENTIAL information of a Producing Party that clearly
12 appears on its face or from other documents or testimony to have been prepared
13 by, received by, known by, or communicated to the non-party.

14 D. If no confidentiality designation of deposition testimony is made at the time of the
15 deposition, any transcript containing CONFIDENTIAL information shall be
16 designated as containing such information by no later than thirty (30) calendar
17 days after receipt of the transcript of the deposition. Otherwise, such transcript
18 shall not be deemed Confidential Material.

19 E. This Protective Order shall not prevent any Party from moving the Court for an
20 order that a non-party witness may be examined and may testify concerning any
21 document containing CONFIDENTIAL information. Prior to so moving, the
22 moving Party seeking to examine the non-party witness or have the non-party
23 witness testify may (but is not required to) instead seek the other Party's
24 agreement by requesting, in writing, to examine the non-party witness or have the
25 non-party witness testify and shall identify the documents designated as about
26 which it seeks to examine the non-party witness or about which it seeks to have
27 the non-party witness testify. In any motion, the moving Party shall have the
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1 burden of establishing before the Court the need for the non-party witness to be
2 examined about or testify about the CONFIDENTIAL document or information.

3 **VI. PROCEDURE TO CHALLENGE DESIGNATIONS**

4 This Protective Order shall not prevent any Party from moving the Court for an order that
5 information designated as CONFIDENTIAL by Producing Party is not, in fact,
6 CONFIDENTIAL information. Prior to so moving, the Party seeking to reclassify the
7 information shall seek the Producing Party's agreement by objecting, in writing, to the
designations by specifying to information at issue and the grounds for questioning the
designations. The Producing Party shall have ten (10) court days to respond to such request. In
any motion, the Producing Party shall have the burden of establishing before the Court the need
for classification as CONFIDENTIAL. In connection with any such motion, the Producing
Party's designation shall be given NO WEIGHT.

13 **VII. INADVERTENTLY PRODUCED MATERIAL**

14 The inadvertent disclosure or production of any Discovery Material that is subject to an
15 objection on the basis of attorney-client privilege or work-product protection, or that
16 inadvertently lacks a CONFIDENTIAL designation under this Protective Order, will not be
17 deemed to waive a Producing Party's claim to its privileged or protected nature or estop the
18 Producing Party or the privilege holder from designating the Discovery Material as attorney-
19 client privileged, subject to the work product doctrine, or designated as CONFIDENTIAL at a
20 later date.

21 Any Receiving Party who becomes aware of any produced Discovery material that is
22 privileged or subject to work product protections shall immediately notify the Producing Party of
23 that fact in writing.

24 Disclosure of the Discovery Material prior to an assertion of privilege, work product
25 protection or a CONFIDENTIAL designation shall not be deemed a violation of the provisions
26 of this Order. This Order and clawback provision are guided but not limited by Federal Rule of
27 Evidence 502(d) and Federal Rule of Civil Procedure 26(b)(5)(B).

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1 **VIII. RIGHT TO FURTHER RELIEF**

2 Nothing in this Protective Order shall abridge the right of any Party to seek judicial
3 modification or amendment of this Protective Order.

4 **IX. RIGHT TO ASSERT OTHER OBJECTIONS**

5 This Protective Order shall not be construed as waiving any right to assert a claim of
6 privilege, relevance, or other grounds for not producing Discovery Material.

7 **X. SURVIVAL OF OBLIGATIONS**

8 The obligations created by this Protective Order shall survive the termination of this
9 action unless otherwise modified by the Court. The Court shall retain jurisdiction, even after
10 termination of this action, to enforce this Protective Order and to make such amendments and
11 modifications to this Protective Order as may be appropriate.

12 IT IS SO ORDERED:

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15 _____
16 Nancy J. Koppe
17 United States Magistrate Judge

18 Dated: August 24
19 _____, 2018
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